



Office of the General Counsel

B-279588; B-279589

April 3, 1998

The Honorable Alfonse M. D'Amato
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Securities and Exchange Commission: Registration Form Used by Open-End Management Investment Companies and New Disclosure Option for Open-End Management Investment Companies; Final Rules

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on major rules promulgated by the Securities and Exchange Commission (SEC), entitled "Registration Form Used by Open-End Management Investment Companies" (Registration Form rule) and "New Disclosure Option for Open-End Management Investment Companies" (New Disclosure Option rule) (RIN: 3235-AE46 and 3235-AH03). We received the rules on March 16, 1998. They were published in the Federal Register as final rules on March 23, 1998. 63 Fed. Reg. 13916 and 13968.

The Registration Form final rule amends Form N-1A which is used by mutual funds to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933. The final rule is intended to improve fund prospectus disclosure and to promote more effective communication of information about funds to investors by focusing the disclosure on essential information. This will assist investors in deciding whether to invest. Disclosure about technical, legal, and operational matters that are common to all funds is minimized.

The New Disclosure Option final rule permits a mutual fund to offer investors a new disclosure document called a "Aprofile," which summarizes key information

about a fund's investment strategies, risks, performance, and fees in a concise, standardized format. Investors have the option of purchasing the fund's shares after reviewing the profile or after requesting and reviewing the fund's prospectus. An investor deciding to purchase shares based on the information in a profile will receive a prospectus with confirmation of the purchase.

Enclosed is our assessment of the SEC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rules. Our review indicates that the SEC complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Securities and Exchange Commission is Thomas McCool, Director, Financial Institutions and Markets Issues. Mr. McCool can be reached at (202) 512-8678.

Robert P. Murphy
General Counsel

Enclosure

cc: The Honorable Jonathan G. Katz
Secretary, Securities and Exchange
Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"REGISTRATION FORM USED BY OPEN-END MANAGEMENT INVESTMENT
COMPANIES" AND "NEW DISCLOSURE OPTION FOR OPEN-END MANAGEMENT
INVESTMENT COMPANIES; FINAL RULES"
(RIN: 3235-AE46; 3235-AH03)

(i) Cost-benefit analysis

The SEC conducted a cost-benefit analysis for both final rules as required by section 2(c) of the Investment Company Act. The act requires the SEC to consider whether its rulemaking will promote efficiency, competition, and capital formation.

The analysis for the Registration Form rule notes that while it is difficult to quantify costs and benefits, the total annual cost of \$175 million for preparing, filing, and updating the current Form N-1A is not expected to rise significantly because new information is not required. The benefits of the new rule include more well-informed investors who may invest more of their resources and allocate their investments carefully, which in turn would tend to promote competition among the funds.

The analysis for the New Disclosure Option rule also notes the difficulty of quantifying the costs and benefits of the rule. The SEC has estimated that the annual cost to the industry of preparing and filing updated profiles would be approximately \$5.6 million, which may be offset by restructured advertising expenditures and lower printing and distribution costs. One benefit is better meeting the diverse information needs of investors in evaluating funds, which has become more difficult as the number of funds has grown.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

An Initial Regulatory Flexibility Analysis and a Final Regulatory Flexibility Analysis were prepared for both rules and were summarized in the preambles to the proposed and final rules, respectively. The complete analyses were furnished to our Office. The analyses contain the information required by the Regulatory Flexibility Act.

The Final Analysis for the Registration Form rule notes that of the approximately 2,700 registered open-end management investment companies, approximately 620 or

23 percent are funds which meet the definition of small entities with net assets of \$50 million or less at the end of the most recent fiscal year. The analysis concludes that the final rule will not impose any additional burdens on small entities because most of the changes in the rule do not require the development of new information. The rule will primarily require a reformatting of the current information, which may take longer the initial time it is performed but will possibly result in less time in the future for preparing the new format. While it considered several alternatives to reduce to the burden on small entities, the SEC found that separate treatment for small entities would not be consistent with the protection of investors.

Concerning the New Disclosure Option rule, the Final Analysis notes that approximately one-third of the 620 small entities could choose to use the new profile or 207 funds. The analysis finds that the new rule would not be significantly burdensome for small entities because use of the profile is optional and that the information contained in the profile is now typically contained a fund's prospectus. As above, while several alternatives were considered, the SEC found that it was unnecessary or inappropriate to adopt any of them because of the need for investor protection.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the SEC is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

Both final rules were issued using the notice and comment procedures contained in 5 U.S.C. § 553.

The Registration Form rule was published as a Notice of Proposed Rulemaking on March 10, 1997 (62 Fed. Reg. 10898) and 78 comments were received in response to the notice. The New Disclosure Option rule was published as a Notice of Proposed Rulemaking on the same day (62 Fed. Reg. 10943) and 256 comments were received.

The preambles to both final rules respond to the issues raised by the comments and discuss any action taken by the SEC in response.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rules both contain information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The preambles to the proposed rules contained the required information regarding the reasons for the collections, the parties affected, and the estimated annual burden hours.

OMB has approved both rules' collections and has issued Control No. 3235-0307 for the collection under the Registration Form rule and Control No. 3235-0488 for the New Disclosure Option final rule.

Statutory authorization for the rule

Both final rules were issued by the SEC pursuant to the authority of sections 5, 7, 8, 10, and 19(a) of the Securities Act (15 U.S.C. §§ 77e, 77g, 77h, 77j, and 77s(a)) and sections 8, 22, 24(g), 30, and 38 of the Investment Company Act (15 U.S.C. §§ 80a-8, 80a-22, 80a-24(g), 80a-29, and 80a-37).

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.